

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

NOV 29 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

DAMIAN EARL MITCHELL,

Appellant.

)  
)  
) 2 CA-CR 2006-0380  
) DEPARTMENT A  
)

MEMORANDUM DECISION

) Not for Publication  
) Rule 111, Rules of  
) the Supreme Court  
)  
)  
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20050860

Honorable Charles S. Sabalos, Judge

AFFIRMED

Barton & Storts, P.C.  
By Brick P. Storts, III

Tucson  
Attorneys for Appellant

H O W A R D, Presiding Judge.

¶1 After a jury trial, appellant Damian Earl Mitchell was convicted of disorderly conduct, a class one misdemeanor; resisting arrest, a class six felony; and possession of a deadly weapon by a prohibited possessor, a class four felony. The trial court found Mitchell had previously been convicted of a felony and sentenced him to time served for the

disorderly conduct conviction and presumptive, concurrent terms of imprisonment, the longest of which was 4.5 years, for the resisting arrest and weapons convictions. The court ordered these terms to be served concurrently with presumptive, concurrent prison terms totaling 2.25 years, imposed following Mitchell's convictions in Pima County Superior Court cause number CR-20051386 for unlawful imprisonment of a dangerous nature and child abuse committed with criminal negligence.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has reviewed the entire record but has found no arguable legal issue to raise on appeal. In compliance with *Clark*, counsel has provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” *Id.* ¶ 32. In a supplemental brief, Mitchell maintains “the jury misunderstood the case;” failed to appreciate the effect of the inconsistent identification evidence; and, although his argument is not entirely clear, appears to challenge the court's response to a question posed by the jury during its deliberations.

¶3 On appeal, we view the evidence in the light most favorable to upholding the verdicts. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). At trial, Tucson Police Officer Troy Perrin testified that after he had stopped a speeding vehicle, he had observed Mitchell in the front passenger seat with an open container of alcohol in his hand. Perrin then requested backup, and Officers Joseph Poulos and Delia Marquez

responded almost immediately. Poulos testified that he questioned Mitchell, who gave his name only as Damian and said that his brother was in the back seat of the vehicle. Poulos stated Mitchell became belligerent when Poulos asked for identification and attempted to explain it is illegal for someone to have an open container of alcohol in the passenger compartment of a vehicle, even if he is not the driver. When Mitchell continued to refuse Poulos's request for identification, Poulos asked him to get out of the vehicle and, when Mitchell did, Poulos arrested him.

¶4 Poulos and Marquez both testified that Mitchell had struggled with them as they attempted to take him into custody. Poulos was knocked to the ground. Marquez was holding Mitchell by his jacket when he broke free, removed the jacket, and dropped it as he fled. As the jacket fell, Marquez felt something heavy in the jacket hit her. Officer Jobe Dickinson testified that he had responded to the scene that night, recovered the jacket, and found a semi-automatic handgun inside the jacket's lining. After further investigation, Poulos and Marquez identified Mitchell as the man who had run from them that night. Probation Officer Ignacio Romero testified he had supervised Mitchell while he was on intensive probation for felony convictions. This evidence was sufficient to establish the elements of disorderly conduct, resisting arrest, and possession of a deadly weapon by a prohibited possessor. *See* A.R.S. §§ 13-2508, 13-2904(A), and 13-3102(A).

¶5 In his supplemental brief, filed in propria persona, Mitchell draws our attention to the following question raised by the jury during its deliberations: "In defense's

case that Mr. Mitchell was not the person in the vehicle, did he at any time have an alibi during this time?” After conferring with counsel, the trial court answered the question as follows: “You must decide from the evidence presented whether or not the State has proven the charges against the Defendant beyond a reasonable doubt.”

¶6 Mitchell maintains a fair trial requires a jury that “know[s] and understand[s] the law.” Although his argument is unclear, he seems to suggest the jury did not understand that, from his perspective, he had successfully challenged the state’s identification evidence during cross-examination of Officers Perrin, Poulos, and Marquez by pointing out inconsistencies in their respective descriptions of the person they had apprehended on January 29, 2005.

¶7 If, by his supplemental brief, Mitchell means to challenge the sufficiency of the evidence, we find no merit to his argument. We will affirm a criminal conviction as long as “a rational trier of fact could have convicted the defendant of the crime in question.” *State v. Dixon*, 216 Ariz. 18, ¶ 10, 162 P.3d 657, 660 (App. 2007), *quoting State v. McGill*, 213 Ariz. 147, ¶ 17, 140 P.3d 930, 935 (2006). Viewed in the light most favorable to sustaining the jury’s verdict, substantial evidence supports Mitchell’s convictions. *See State v. Roque*, 213 Ariz. 193, ¶ 93, 141 P.3d 368, 393 (2006).

¶8 To the extent Mitchell may be attempting to argue that the jury misunderstood the state’s burden of proof at trial, as his counsel argued when addressing the question from

the jury, any such concern was cured by the court's response and the court's earlier instruction to the jury that:

In this prosecution, in addition to showing the commission of this offense, it is necessary and incumbent upon the State to prove beyond a reasonable doubt that the Defendant was the one who committed it. If you have a reasonable doubt as to the question of the identity of the person who committed the offense, then you are compelled to find the Defendant not guilty.

We presume the jury followed this instruction about the state's burden of proof, *see State v. LeBlanc*, 186 Ariz. 437, 439, 924 P.2d 441, 443 (1996), which was reinforced by the court's appropriate response to the question from the jury.

¶9 Accordingly, to the extent we understand Mitchell's claim on appeal, we find it lacks merit. Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and find no error warranting reversal of Mitchell's convictions. We affirm the judgment of convictions and sentences imposed.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge